Christopher H. Dillon dillon@burkeparsons.com Burke & Parsons 100 Park Avenue New York, NY 10017-5533

Tel: (212) 354-3817 Fax: (212) 221-1432

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ARCHER DANIELS MIDLAND COMPANY and ADM RICE, INC.,

Plaintiffs,

٧.

JPMORGAN CHASE BANK, N.A.,

Defendant.

11 Civ. 0988 (JSR)

AFFIDAVIT OF
CHRISTOPHER H. DILLON
IN SUPPORT OF
APPLICATION FOR A
PRELIMINARY INJUNCTION
AND TEMPORARY
RESTRAINING ORDER

STATE OF NEW YORK ) : ss COUNTY OF NEW YORK )

CHRISTOPHER H. DILLON, having been duly sworn, deposes and says:

- I am a member of the firm of Burke & Parsons, admitted to practice before this Court, and make this Affidavit from personal knowledge.
- This morning I spoke with counsel for JPMorgan Chase Bank, N.A.,
   Andrew N. Keen, Esq. (email: Andrew.Keen@chase.com; telephone:
   +1.212.552.0921) in an effort to determine if the matter could be resolved without the need for a TRO and Injunction. Unfortunately, the answer is no.

- Attached hereto as Exhibit 1 is my post-phone call email exchange with
   Mr. Keen.
- In addition, attached hereto as Exhibit 2, is a copy of the February 14,
   2011 letter to which Mr. Keen's email refers.
- 5. At approximately 3:35 p.m. today, we sent a copy of the Verified Complaint to Mr. Keen by email, and notified him of the requirements of the individual rules of Judge Jed S. Rakoff.
- 6. No previous application for the relief sought in this action has been made.
- 7. Attached hereto as Exhibit 3, is a copy of the relevant letter of credit, which was intended to be annexed to the Verified Complaint as Exhibit A.
- 8. Attached hereto as Exhibit 4, is a copy of the relevant Performance Bond, which was intended to be annexed to the Verified Complaint as Exhibit B.

CHRISTOPHER H. DILLON

Sworn to before me this 14th day of February, 2011

**Notary Public** 

Notary Public, State of New York USA
Qualified in New York County
Commission Expires 29 June 2013

0003\_S01.docx

#### **Christopher H Dillon - Burke & Parsons NY**

**Subject:** RE: Letter of Credit TFTS-868801

From: "Keen, Andrew" < Andrew. Keen@chase.com>

Date: 2/14/2011 12:29 PM

To: "dillon@burkeparsons.com" < dillon@burkeparsons.com>

Dear Mr. Dillon,

The Bank's position is as stated in our letter sent to your client today.

Andrew N. Keen

JPMorgan Chase Legal Department

One Chase Manhattan Plaza, 26th floor

New York, New York 10005

tel. (212) 552-0921

fax (212) 552-1201

----Original Message----

From: Christopher H Dillon - Burke & Parsons NY [mailto:dillon@burkeparsons.com]

Sent: Monday, February 14, 2011 12:29 PM

To: Keen, Andrew

Subject: Letter of Credit TFTS-868801

**EXHIBIT** 

1

Dear Mr. Kean,

As discussed, I understand that you have received our letter dated
February 12, 2011, along with its enclosures. I also understand that,
unless enjoined by a court order, JPMorgan Chase Bank continues to plan
to make a payment under the captioned letter of credit without reviewing
the accuracy of any statement by the beneficiary that a draw has been
made in accordance with the performance bond, and without reviewing the
legitimacy of the documentary presentation made under the performance
bond. I also confirm that, in your view, you are unable to tell me the
details of any such a demand and the time or date when, in the ordinary
course, JPMorgan Chase Bank would be making payment under the letter of
credit.

In these circumstances, we believe that an action seeking a TRO and injunction is required and we will revert to you when it has been filed.

**Chris Dillon** 

**Burke & Parsons** 

dillon@burkeparsons.com

+1.212.354.3817 (direct)

+1.914.391.7464 (mobile)

This transmission may contain information that is privileged, confidential, legally privileged, and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or

use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. Although this transmission and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by JPMorgan Chase & Co., its subsidiaries and affiliates, as applicable, for any loss or damage arising in any way from its use. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format. Thank you.

# OJPMorgan Chase Bank, N.A.

TO: ADM Rice, Inc.

ATTN: Christian Bonnesen

TEL. NO:

**FAX NO:** 914-366-7137

DATE: 2/14/11 # PAGES INCL. COVER 2

Regards, Andrew Kosik

From the desk of...
Andrew Kosik, CDCS
JPMorgan Treasury Services
Standby Letter of Credit
10420 Highland Manor Drive, 4<sup>th</sup> Floor
Tampa, Fl 33610
Tel: (813) 432-5578
Fax: (813) 432-5161

e-mail: andrew.j.kosik@jpmchasc.com

This facsimile message is intended only for the use of the individual or entity named above and contains information which is confidential, non-public or legally privileged.

Any dissemination or distribution of this message other than to its intended recipient is strictly prohibited. If you have received this message in error, please notify us by telephone immediately and return the original message and all copies to us at our above address by mail.

**EXHIBIT** 

JPMorganChase 😈

JPMorgan Chase Bank, N.A. c/o IPMorgan Treasury Services Chobal Trade Services 10420 Highland Manor Drive Tampa, FL 33610

February 14, 2011

Archer Daniels Midland Co. 4666 Faries Parkway Decatur, IL 62526

Re:

ADM Rice, Inc. (the "Applicant")

Letter of Credit Number TFTS-868801 (the "Letter of Credit")

Dear Mr. Christian Bonnesen

This letter is in response to your letter, dated February 11, 2011 wherein you state in effect, that you believe demand under the Performance Bond referenced in your letter is wrongful.

As you know, the Bank is the issuer of the Letter of Credit and the terms of the draw and the Letter of Credit were agreed to by both the Applicant and the Beneficiary. As issuer of the Letter of Credit, the Bank has certain independent obligations owing to the Beneficiary, separate from its contractual agreement with the Applicant, due to the unique tri-party letter of credit relationship. Under well settled letter of credit law, it is inappropriate for an issuing bank to become a party to any factual issues or disputes relating to the underlying transaction between the Applicant and the Beneficiary. The terms of the Letter of Credit and the conditions precedent to any drawing are the matters the Bank is obligated to address. So long as the Letter of Credit is in effect, should a confirming draw be presented to the Bank, it must honor its obligations as issuing bank and would be compelled to make payment absent an order directing otherwise issued by a court of competent jurisdiction. Upon making payment, the Bank would be entitled to reimbursement from the Applicant, as mutually agreed by all parties in the reimbursement agreement.

Should you have any questions, please do not hesitate to contact the undersigned or our counsel, Andrew Keen at 212 552 0921.

Very truly yours,

Assistant Vice President

## JPMorganChase Q

JPMorgan Chase Bank, N.A. Global Trade Services 300 South Riverside Plaza Mail Gode II. 1-0236 Chicago, IL 60606-0236

> AUG 27, 2010 OUR L/C NO.: TETS-868801

MESSAGE SENT TO: TRADE BANK OF IRAQ CENTRAL BANK BLDG. RASHEED ST., 4TH FL. BAGHDAD, IRAQ

APPLICANT: ADM RICE, INC. 660 WHITE PLAINS ROAD TARRYTOWN, NY 10591

FOLLOWING IS THE TEXT OF A S.W.I.F.T. MESSAGE SENT TO THE PARTY INDICATED ABOVE:

\*\*\*\*\*\*\*

DOCUMENTARY CREDIT NUMBER:

TFTS-868801

FURTHER IDENTIFICATION:

REQUEST

DATE OF ISSUE:

AUGUST 27, 2010

DETAILS:

WE HAVE ESTABLISHED OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR. AS DETAILED HEREIN SUBJECT TO UGP LATEST VERSION

BENEFICIARY:

APPLICANT:

TRADE BANK OF IRAQ CENTRAL BANK BLDG. RASHEED ST., 4TH FL. BAGHDAD, IRAQ

ADM RICE, INC.

660 WHITE PLAINS ROAD TARRYTOWN, NY 10591

DATE AND PLACE OF EXPIRY:

MARCH 15, 2011 AT OUR COUNTER

DOCUMENTARY CREDIT AMOUNT:

USD6, 926, 850.00

AVAILABLE WITH:

JPMORGAN CHASE BANK, N.A.

(S112) Andrew J Kosik

Page 1 of 6

EXHIBIT

### JPMorganChase 🔘

JEWorgan Chase Rinds NAS Chuai Trade Services 300 South Riverside Muze Mail Gale II. 1-0256 Chicago II. 40006-0236

> AUG 27, 2010 OUR L/C NO.: TFTS-868801

MESSAGE SENT TO: TRADE BANK OF IRAQ CENTRAL BANK BLOG, RASHEED ST., 4TH FL. BAGHDAD, IRAQ APPLICANT: ADM RICE, INC. 660 WHITE PLAINS ROAD TARRYTOWN, NY 10591

TAMPA, FLORIDA BY PAYMENT

ADDITIONAL DETAILS:

IN CONSIDERATION OF YOU ISSUING YOUR BERFORMANCE BOND AS REQUESTED BELOW WE HEREBY OPEN IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER TETS-858801 FOR AN AMOUNT OF USD6, 926, 850.00 (SIX MILLION NINE HUNDRED TWENTY SIX THOUSAND EIGHT BUNDRED RIFTY AND 00/100 UNITED STATES DOLLARS COVERING THE APPLICANT'S OBLIGATIONS UNDER CONTRACT NUMBER MOT/GB/R5/4/2010, AVAILABLE AGAINST YOUR AUTHENTICATED SWIFT THAT YOU HAVE DULY ISSUED YOUR PERFORMANCE BOND AS REQUESTED BY OURSELVES AND THAT YOU HAVE RECEIVED A CLAIM IN ACCORDANCE WITH THE TERMS OF THE PERFORMANCE BOND.

THIS STANDBY LETTER OF CREDIT EXPIRES ON MARCH 15,2011 AND IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO, 600 AND ANY AMENDMENTS THERETO AND REVISIONS THEREOF

IN THE EVENT OF A DRAWING UNDER THIS PERFORMANCE BOND OUR MAXIMUM AGGREGATE BIABILITY IS RESTRICTED TO USD6,926,850.00 (SIX MILLION NINE HUNDRED TWENTY SIX THOUSAND EIGHT HUNDRED FIFTY AND 00/100 UNITED STATES DOLLARS)

WE UNDERTAKE TO PAY TO THE DEVELOPMENT FUND FOR IRAQ, FOR ACCOUNT OF TRADE BANK OF TRADE ON YOUR FIRST AUTHENTICATED SWIFT DEMAND, ANY AMOUNT THAT YOU MAY CLAIM NOT EXCEEDING THE TOTAL VALUE OF THE SAID BOND PROVIDED THAT SUCH DEMAND IS IN ACCORDANCE WITH THE PERFORMANCE BOND.

PLEASE VERY URGENTLY ISSUE, UNDER OUR RISK AND RESPONSIBILITY, YOUR PERFORMANCE BOND FOR AN AMOUNT OF USD6,926,850.00 (SIX MILLION NINE BUNDRED TWENTY SIX THOUSAND EIGHT HUNDRED FIFTY AND 00/100 UNITED STATES

(15112) Androwd Kosik

## JPMorganChase 🗇

TPM organ Chase Bank, N.A. Global Trade Services 300 South Riverside Plaza Mail Code ILI 0236 Chicago, IL 60616 0236

> AUG 27, 2010 OUR 1/C NO. TETS-868801

MESSAGE SENT TO: TRADE BANK OF IRAQ CENTRAL BANK BIDG. RASHEED ST., THE FL. BAGHDAD, IRAQ APPLICANT: ADM RICE, INC. 660 WHITE PLAINS ROAD TARRYTOWN, NY 10591

DOLLARS) FOR THE ACCOUNT OF ADM RICE, INC., 560 WHITE PLAINS ROAD, TARRYTOWN, NY 10591, IN FAVOR OF MINISTRY OF TRADE/GRAIN BOARD OF TRADE VALLED UNTIL MARCH 1, 2011 COVERING CONTRACT NUMBER MOT/GB/RS/4/2010.

SULTIPLE ORAWINGS ARE PROFIBITED.

ALL BANKING CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT.

UPON ISSUANCE OF YOUR PERFORMANCE BOND, PLEASE URGENTLY PROVIDE THE REFERENCE NUMBER AND DATE OF ISSUANCE BY SWIFT AND CONFIRM THAT YOU HAVE EITHER MAILED OR FAXED A COPY OF THE PERFORMANCE BOND TO US AT SPHORGAN CHASE BANK, N.A., C/O JPMORGAN TREASURY SERVICES, ATTN: STANDBY LETTER OF CREDIT DEPT., 10420 HIGHLAND MANOR BRIVE, ATH FLOOR, TAMPA, ELORIDA 33610 FAX NUMBER 1-813-432-5161.

IN CONSIDERATION OF THIS STANDBY LETTER OF CREDIT IN YOUR EAVOR AND AT THE REQUEST OF THE ABOVE NAMED APPLICANT, PLEASE ISSUE YOUR GUARANTEE AS FOLLOWS IN FAVOR OF:

GUARANTEE BENEFICIARY:

MINISTRY OF TRADE/GRAIN BOARD

OF IRAQ

P'O. BOX 329 BAGHDAD, IRAQ

GUARANTEE EXPIRY DATE:

MARCH 1, 2011

#### GUARANTEE TEXT:

WE, THE TRADE BANK OF IRAQ, ARE ISSUING THIS PERFORMANCE BOND TO YOU, MINISTRY OF TRADE/GRAIN BOARD OF IRAQ IN CONNECTION WITH THE CONTRACT NUMBER MOT/GB/R5/4/2010 (THE '"CONTRACT") BETWEEN YOU AND ADM RICE, INC. 660 WHITE PLAINS RD, TARRYTOWN, N.Y. 10591 (THE ''CUSTOMER'') RELATING TO THE SALE BY ADM RICE OF 120,000 METRIC TONS PLUS OR MINUS FIVE PERCENT OF

## JPMorganChase 🕻

Jemogram Chase Bimil, N.A. Giolal Trade Service 900 Sendi Processide Passi Mail Code 11 19736 Chiengo: U. 60676 10236

> AUG 27, 2010 OUR L/C NO.: TFTS-868801

MESSAGE SENT TO: TRADE BANK OF IRAQ CENTRAL BANK BLOG RASHEED ST., ATH FU. BACHDAD: TRAQ

APPLICANT: ADM RICE, INC. 660 WHITE PLAINS ROAD TARRYTOWN, NY 10591

U.S. RICE ON CAMD F BASIS AND WHEREAS THE CONTRACT CONTAINS AN OBLIGATION ON YOUR CUSTOMER TO PROVIDE A PERFORMANCE BOND IN THE AMOUNT OF USDE, 926,850.00 (SIX MILLION NINE HUNDRED TWENTY SIX THOUSAND EIGHT HUNDRED FIETY AND OCYLOO UNIVED STATES DOLLARS) (THE ''PERFORMANCE BOND').

ALL CLAIMS MADE UNDER THIS PERFORMANCE BOND MUST BE ACCOMPANIED BY AM SGS ORIGINAL LABORATORY REPORT SPECIFICALLY CERTIFYING THAT THE QUALLTY OF THE PURCHASED COMMODITY DOES NOT MEET THE GONTRACTUAL SPECIFICATIONS.

WE HERERY GUARANTEE TO PAY TO THE SEVELOPMENT FUND FOR TRAQ, FOR YOUR ACCOUNT, SUCH AMOUNT AS YOU MAY CLAIM FROM US HEREUNDER UPON PRESENTATION OF YOUR FIRST WRITTEN DEMAND AT OUR COUNTERS TO BE SIGNED BY YOUR AUTHORIZED SIGNATORY SPECIFYING THE AMOUNT CLAIMED HEREUNDER, CERTIFYING THAT THE CUSTOMER HAS FAILED TO FULFILL ITS OBLIGATIONS TO YOU AND A DETAILED EXPLANATION OF SUCH FAILURE TO COMPLY WITH THE CONTRACT, AND ACCOMPANIED BY THE SES ORIGINAL LABORATORY REPORT AS STATED ABOVE, ACCORDINGLY YOU ARE ENTITLED TO RECEIVE PAYMENT UNDER THE PERFORMANCE BOND, PROVIDED THAT:

- 1. ONLY ONE DEMAND MAY BE MADE HERE UNDER PRIOR THE EXPIRY DATE (AS DEFINED BELOW).
- 2, the payment of any claim be made on first demand regardless of any contestation between the parties concerned.
- 3. WE CONFIRM THAT THE NECESSARY APPROVAL OF THE FOREIGN EXCHANGE BOND.
- 4. THE PAYMENT OF ANY CLAIM SHOULD BE MADE ACCORDING TO THE PREVAILING EXCHANGE RATE AT THE ACTUAL DATE OF PAYMENT.

## JPMorganChase 🕻

JPM brgan Chase Bank, N.A. Global Trade Scivices 300 South Riverside Placa Mail Code IL 1-0236 Chileagu, IL 60606-0236

> AUG 27, 2010 OUR L/C NO. TETS-868801

MESSAGE SENT TO: TRADE BANK OF TRAQ CENTRAL BANK BLDG. RASSEED ST., ATH FL. BAGRDAD, TRAQ APPLICANT: ADM RICE, INC. 660 WHITE PLAINS ROAD TARRYTOWN, NY 10591

- 5. IN CASE OF DISPUTE, THE PERFORMANCE BOND IS SUBJECT TO TRACT LAW.
- 6. This performance bond is not subject to any conditions other than those conditions stated above.

LET IT BE KNOWN THAT THIS PERFORMANCE BOND BEING SOLELY IN YOUR FAVOR AS BENEFICIARY'S IS NOT ASSIGNABLE OR TRANSFERABLE TO ANY THIRD BARRY, LIKEWISE IT IS NOT TRANSFERABLE BY THE PRINCIPAL TO ANY OTHER BENEFICIARY OR THIRD PARTY WHOM SO EVER IS NOT PERMISSIBLE, AS SAME BEING PERSONAL TO ALL PARTIES CONCERNED.

BY THIS PRESENT PERFORMANCE BOND, WE UNDERTAKE TO PAY TO YOU ENT EMOUNT OR CLAIM NOT EXCEEDING UNDER AND CIRCUMSTANCES THE ABOVE MENTIONED AMOUNT, PROVIDED THE CLAIM FALLS WITHIN THE DIRECT SCOPE OF THE MATTER TO BE INDEMNIFIED AND IS ERRELEVANT TO ANY MATTER EVEN IF THESE MATTERS RESULTING FROM THE SUBJECT TO BE INDEMNIFIED OR RELEVANT THERE TO, WHEN PARTICULAR TO ANY PARTY, WHATSOEVER ITS ORIGIN, SINCE THIS PERFORMANCE BOND IS IN YOUR

FAVOR AS THE SOLE BENEFICIARY'S AND SUBJECT TO OUR RECEIPT OF YOU CHALM IN THIS OFFICE NOT LATER THAN THE OFFICIAL CLOSING TIME IN BAGHDAD OF THE 1.5T DAY OF MARCH IN THE YEAR 2011 (THE ''EXPIRY DATE'') OTHERWISE SHOULD WE NOT RECEIVE ANY CLAIM FROM YOU BY THAT DATE OUR LEASTLITY WILL CEASE AND THE PRESENT PERFORMANCE BOND WILL BECOME NULL AND YOUR AND IT WILL BE REMOVED FROM OUR RECORDS.

IN ANY EVENT OR FOR ANY REASON OUR MAXIMUM LIABITITY DIDER THIS. PERFORMANCE BOND WILL NOT EXCEED THE SUM TO BE INDEMNIFTED SHOWN HERE ABOVE.

YOURS FAITHFULLY,

AUTHORIZED SIGNATURE

131121 Addition Likelik

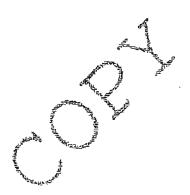
## JPMorgan Chase Q

IPMorgan Chase Bank; N.S. Sidna Transistoria Sidna Transistoria 300 Sonda Riversido Plaza Vial Code II. 1-0236 Calicago II. 2000 - 0236

> AUG 27, 2010 OUR L/C NO.: TFTS-868801

MESSAGE SENT TO: TRADE HANK OF IRAQ CENTRAL HANK BLOG, RASHED ST 4TH FL BAGHDAD, IRAQ APPLICANT:
ADM RICE, INC.
660 WHITE PLAINS ROAD
TARRYTOWN, NY 10591

SPECIAL INSTRUCTIONS FOR TRADE BANK OF IRAQ:
FIRASE SEND THE ORIGINAL GUARANTEE DIRECTLY TO THE GRAIN BOARD OF IRAQ AND
SEND A COPY VIA B MAIL TO: ADMRICE (AT) ADM COM



## JPMorganChase (1)

JPMorgan Chase Bank, N.A. Cilobil Tende Services 300 South Riverside Plaza Mail Code ILI 0236 Chicago, IL 60606,0736

> AUG 30, 2010 OUR L/C NO.: TFTS-868801

> > AMENDMENT NO : 1

MESSAGE SENT TO: TRADE BANK OF IRAQ CENTRAL BANK BLDG. RASHEED ST., 4TH FL. BAGHDAD, IRAQ

APPLICANT: ADM RICE, INC. 660 WHITE PLAINS ROAD TARRYTOWN, NY 10591

EOLLOWING IS THE TEXT OF A S.W.I.F.T. MESSAGE SENT TO THE PARTY INDICATED ABOVE:

\*\*\*\*\*\*\*\*\*

SENDER REFERENCE:

TETS-868801

RECEIVER'S REFERENCE:

NONREE

NUMBER OF AMENDMENT:

1

ALL OTHER TERMS AND CONDITIONS OF THE CREDIT REMAIN UNCHANGED.

ADDITIONAL GUARANTEE TEXT

PLEASE CHANGE 'C AND F' TO READ 'CIF' WHEREVER IT MAY APPEAR.





#### TRADE BANK OF IRAQ

608, Al-Yarmouk District, St. No. 1, Building No. 20 Baghdad - Iraq

MINISTRY OF TRADE GRAIN BOARD OF IRAO BAGHDAD - IRAO

Guarantee No

IGT1011517DRE

Type

Performance Guarantee

Amount

USD 6,926,850,00

Issue date

2/9/2010

Expiry Date:

1/3/2011

Purpose (contract details)

RELATING TO THE SALE BY ADM RICE OF 120,000
METRIC TONS PLUS OR MINUS FIVE PERCENT OF

U. S. RICE ON CIF BASIS CONTRACT NO MOT/GB/

R5/ 4/2010

Applicant (name &

ADM RICE, INC.

address)

660 WHITE PLAINS ROAD, TARRYTOWN, NY 10591

We, Trade Bank of Iraq, are issuing this Performance Bond to you MINISTRY OF TRADE GRAIN BOARD OF IRAQ in connection with the contract Number MOT/GB/ R5/ 4/2010 (the Contract') between you and ADM RICE, INC. 660 WHITE PLAINS RD, TARRYTOWN, NY 10591 (the customer) relating to THE SALE BY ADM RICE OF 120,000 METRIC TONS PLUS OR MINUS FIVE PERCENT OF U. S. RIGE ON CIF BASIS and whereas the Contract contains an obligation on your Customer to provide a Performance Bond in the amount of USD 6,926,850.00 (Six Million Nine Flundred Twenty Six Thousand Eight Hundred Fifty US Dollar) (the "Performance Bond").

All claims made under this performance bond must be accompanied by an SGS original, laboratory report specifically certifying that the quality of the purchased commodity does

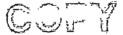
not meet the contractual specifications.

We hereby guarantee to pay to The Development Fund for Iraq, for your account, such amount as you may claim from us hereunder upon presentation of your first written demand at our counters purporting to be signed by your authorised signatory specifying the amount claimed hereunder, certifying that the Customer has falled to fulfill their obligations to you and a detailed explanation of such failure to comply with the contract, and accompanied by the SGS original laboratory report as stated above. Accordingly you are entitled to receive payment under the Performance Bond provided that:

a) only one demand may be made hereunder prior to the expiry dale (as defined below);

Racing and the second and the second

**EXHIBIT** 



b) the payment of any claim should be made on first demand regardless of any contestation between the parties concerned.

c) We confirm to you that the necessary approval of the foreign exchange authorities has been already obtained for issuing this performance bond.

d) Wherever applicable the payment of any claim should be made according to the prevailing exchange rate at the actual dale of payment.

e) in case of dispute, (his performance bond is subject to Iraqi law.

f) this performance bond is not subject to any conditions other than those conditions stated above:

Let if be known that this Performance Bond being solely in your favour as Beneficiary and is not assignable or transferable to any third party. Likewise it is not transferable by the principal to any other beneficiary or third party whoseever is not permissible, as same being personal to all parties concerned.

By this Performance Bond, we undertake to pay to you any amount or claim not exceeding under any circumstances the above mentioned amount, provided the dam falls within the direct scope of the mailer to be indemnified and is irrelevant to any other matter even if these matters resulting from the subject to be indemnified or relevant thereto, when particular to any party, whatsoever its origin, since this Performance Bond is in your favour as the sole Beneficiary and subject to our receipt of your claim in this office not later than the official closing time in Baghdad of the 1st day of March in the year 2011 (the expiry date) otherwise should we not receive any claim from you by that date our liability will cease and the present Performance Bond will become null and void and it will be removed from our records.

In any evenif or for any reason our maximum liabilities under this Performance Bond will not exceed the sum to be indemnified shown here above.

Yours faithfully:

RAJAA IBBAHIM AHMED

B12

HUSSAM SIRRI

A16